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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) No. CR 08-0398 WHA
11 Plaintiff,) CR 08-0667 WHA
12 v.) RESPONSE TO LETTER FROM
13 NIKETA WILLIAMS,) DEFENDANT
14 Defendant.) Honorable William H. Alsup

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16 **RESPONSE**

17 On August 7, 2009, the Court issued an order for the parties to respond to a letter sent to the
18 Court by Defendant Niketa Williams dated July 25, 2009. Undersigned counsel has reviewed the
19 letter and respectfully offers the following response.

20 Although Ms. Williams discusses the issue of restitution at some length, it does not appear that
21 she is actually requesting that the amount ordered by the Court be changed. Instead, Ms. Williams
22 seems to be requesting a “downward departure” in her term of imprisonment. Of course, the Court
23 lacks jurisdiction to substantively amend the sentence at this late date. *Cf.* Fed. R. Crim. P. 35
24 (authorizing the Court to correct a sentence that resulted from arithmetical, technical or other clear
25 error within 7 days) & 36 (authorizing the Court to correct a clerical error in the judgment at any
26 time). Moreover, the plea agreement signed by Ms. Williams precludes any request for a downward

1 departure. *See* Plea Agreement (filed Oct. 1, 2008) (Docket #22) ¶ 7. Breach of this plea agreement
2 would relieve the government from all of its promises, including with respect to charges from other
3 districts. *See id.* ¶¶ 13, 14.

4 Undersigned counsel believed at the time of sentencing, and still believes, that the amount of
5 restitution stipulated in the plea agreement and ordered by the Court is accurate, and could easily
6 have been proven by the government had the matter proceeded to a hearing. Undersigned counsel
7 also reaffirms his belief that, at the time Ms. Williams entered her guilty plea pursuant to the plea
8 agreement, she understood all of the terms of the agreement and all the rights she was giving up by
9 pleading guilty, and that her decision to plead guilty was knowing and voluntary.

10 Finally, undersigned counsel respectfully declines to offer any specific response to the private
11 discussions with Ms. Williams alleged in her letter, since doing so would potentially violate the
12 ongoing duty of confidentiality to her under the attorney-client privilege.

13 Dated: August 11, 2009

14 Respectfully submitted,

15 BARRY J. PORTMAN
16 Federal Public Defender

17 /s/
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DANIEL P. BLANK
Assistant Federal Public Defender

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